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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/348,954	07/07/1999	JOHN A GENT	C-309	6008

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EXAMINER

WEBB, JAMISUE A

ART UNIT PAPER NUMBER

3761

DATE MAILED: 08/05/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/348,954

Applicant(s)

GENT ET AL.

Examiner

Jamisue A. Webb

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 June 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Priority

1. Acknowledgment is made of applicant's claim for foreign priority based on an application filed in United Kingdom on 07/07/98. It is noted, however, that applicant has not filed a certified copy of the foreign application as required by 35 U.S.C. 119(b).

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-17, 19 and 21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. With respect to Claim 1: the phrase "away from the base of the pouch" is indefinite. It is unclear to the examiner, what this means. Does this mean the carrier is attached away from the base of the pouch? If it does, it is unclear to the examiner how the carrier can be attached away from the pouch. If the carrier is attached directly to the pouch, how can it then be attached away from the pouch?

5. Claims 19 and 21 recite the limitations "the odor" and "the user". There is insufficient antecedent basis for this limitations in the claims.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

7. Claims 1, 4-6, and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Dierckes, Jr. et al. (5,868,724).
8. Dierckes discloses a pouch, outer cover of a diaper (40) that forms a base of the pouch, comprising a carrier, topsheet and the absorbent core (38, 42), where the absorbent core is the matrix can include a layer of non-absorbent gelling material, which can provide odor control (column 9, lines 13-19), the topsheet and the backsheet are joined together forming an enclosed volume (column 39, lines 25-39), and the matrix comprises a plasticizer made from glycerol and water, and can be combined with polyethylene glycol (column 19, lines 61-67).
9. Claims 1, 4, 5, 8, 9, and 16 rejected under 35 U.S.C. 102(e) as being anticipated by Caldwell et al. (6,083,602).
10. Caldwell discloses breathable briefs with an outer shell (15) which forms the base of the pouch, a carrier, which includes a shedding shield and an absorbent pad (20, 25), in which can be fastened on one or both ends to form a pocket or a flap and an enclosed volume, in which the pad can also be treated with disinfectants and anti-odor agents (column 52, lines 1-27). Caldwell also discloses a wide variety of additives to produce porous webs, such as stearic acid salts (column 37, line 57). The definition of a soap, is a metallic salt of a fatty acid, as of aluminum

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or iron, Caldwell discloses stearic acid (which is a fatty acid) salts, therefore the examiner considers Caldwell to disclose the use of soaps in an absorbent matrix.

11. Claims 1, 2, 4, 5, 7, 9, and 10 rejected under 35 U.S.C. 102(e) as being anticipated by Gross (6,031,147).
12. With respect to Claims 1, 4, 5, 7, and 9: Gross discloses an absorbent structure with a pouch, outer cover (26) which forms the base of the pouch, carrier means, topsheet and absorbent core (24,22), comprising an absorbent matrix (22), comprising a surfactant, being affective to reduce the odor of urine (column 2, lines 48-49), in which the topsheet is attached to the backsheet (column 3, lines 3-4) forming an enclosed volume.
13. With respect to Claim 2: Gross discloses the surfactant coating the absorbent matrix (column 5, lines 21-29).
14. With respect to Claim 10: Gross discloses the absorbent matrix being made from superabsorbent materials, such as hydrogel polymers made from mixtures of polymers, one being polyvinyl alcohol (column 4, lines 5-15), and can be made in any geometrical shape, including fibers (column 4, lines 17-18).
15. Claims 1, 3, 16, and 22 rejected under 35 U.S.C. 102(e) as being anticipated by Hasse (5,769,832).
16. Hasse discloses a pouch ,diaper (20), comprising a carrier, adhesive tabs (40), that carries fragrance microcapsules (70), that are embedded in the adhesive securement means (column 7, lines 52-53), therefor the capsules are adhered to the carrier, and where the carrier, fastener tabs,

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are attached to the outer surface/base of the pouch, diaper, (column 10, lines 32-36). The diaper comprises the an outer cover and a backsheet, which form an enclosed volume (see all figures).

17. Claims 1, 4, 5, 11, 12, 14, 15 and 18-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Andersson et al. (4,363,322).

18. With respect to Claims 1, 4, 5, 18, 19, 21, and 22: Andersson discloses a liquid absorbing product such as a sanitary napkin, comprising a pouch, outer cover (3) which forms a base of the pouch, a carrier (1,4,5,6), containing deodorizing strips (1) located in an absorbent matrix (6), (see abstract). Anderson also discloses an anti-slip layer or strip can be fastened to both the outer cover, as well as an inner surface of the absorbent pad, (column 7, lines 54-58). Andersson discloses the outercover providing an enclosed volume (See Figures 1-3).

19. With respect to Claims 11, 12, 14, 15, 18, 20, and 23-26: Andersson discloses the use of compounds that give off oxygen in moisture, with a list of peroxides, and oxides, with a preferred peroxide being sodium perborate, which is incorporated into the absorbent product as a powder or impregnation of the absorbent core. (column 5, lines 16-32).

20. Claims 1, 4, 5, and 16-17 rejected under 35 U.S.C. 102(b) as being anticipated by Difilippantonio et al. (5,582,603).

21. Difilippantonio discloses an absorbent product with a pouch, body fluid impermeable barrier (20) which forms the base of the pouch, that may be heat sealed to the central absorbent core (column 3, lines 44-46), and in which a top layer includes a powdered deodorant ingredient

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including fragrances, to provide active odor control (column 5, lines 6-16). The outer cover (60) of Difilippantonio encloses the article and forms an enclosed volume. (See Figures 1 and 2).

Claim Rejections - 35 USC § 103

22. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

23. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

24. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Andersson (4,363,322) in view of Gancet et al. (5,885,263).

25. Andersson, as disclosed above for claim 1, teaches the use of oxidants, comprising metals that catalyze the decomposition, such as sodium chlorate, but does not specifically teach the use of the malodor counteractant comprising a chlorine dioxide generator.

26. Gancet discloses the use of oxidants such as hydrogen peroxide and chlorine dioxide. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the oxidant of Andersson, be chlorine dioxide, as disclosed by Gancet, in order to suppress the smell of bodily fluids. (See Gancet column 1). Furthermore, a hydrogen peroxide and a chlorine dioxide (as disclosed by Gancet), are both oxidizers, and therefore perform the same function, and therefore are interchangeable.

Response to Amendment

27. Applicant's arguments filed 6/10/02 have been fully considered but they are not persuasive.

28. With respect to Applicant's arguments that Dierckes, Jer. Et al. does not disclose, either expressly or inherently, a pouch where a carrier, comprising a malodour counteractant, is directly or indirectly affixed to the wall of the pouch: As stated above in the rejection, Dierckes discloses the carrier being the core, due to the fact that the core contains the malodour counteractant, and it states that the topsheet is connected to the carrier, which is then connected to the backsheet. The examiner considers the article to be a pouch, therefore the carrier is connected to the base of the pouch. Rejection stands as stated above.

29. With respect to the arguments with regards to the Andersson et al. reference: Applicant argues that Andersson does not disclose a collection pouch for collection matter excreted from the body, however Andersson discloses in Column 1, that the invention can be a sanitary napkin or a diaper, both of which are used to collect bodily fluids. Applicant's argue that the deodorizing substance that is directly or indirectly affixed to the wall of a pouch, however it

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should be noted that Andersson discloses the layers are fused together, therefore the core attached to the walls of the pouch and therefore the deodorizing substance indirectly attached to the wall of the article. With respect to applicant's arguments that Andersson does not disclose a peroxide generator, the examiner, as stated above considers Andersson to have a peroxide generator. Applicant has not argued how the Andersson peroxide is not a peroxide generator, but has simply stated that Andersson does not have one. It is the examiner's position that Anderson does disclose a peroxide generator, therefore rejection stands as stated above. Applicant's have also argued that Andersson does not disclose a method of using the product, however Andersson discloses the product can be used as a sanitary napkin, wound dressing, or diaper, therefore giving a use to the product. The applicant has not claimed any specific manipulative steps on what the method of use is, therefore Anderson discloses the claimed product, therefore obviously has a use for the product. It should be noted that if the applicant amends to the claims to recite specific manipulative steps of the method of use, the examiner will require an restriction.

30. With respect to Applicant's arguments regarding the Difilippantonio reference:

Difilippantonio discloses a barrier layer that is sealed to the central core, which is the carrier of the malodour counteractant, therefore it is the examiner's position that Difilippantonio does disclose the claimed invention, see rejection above.

31. With respect to Applicant's arguments regarding the Caldwell, Hasse, and Gross references: A pouch is something that is bag-like in shape and is used to hold various items, As stated above in the rejections, it is the examiner's position that the references contain each and every claim limitation. Each of the references are intended to be used to collect bodily fluids, have an outer cover and an inner layer that make up a pouch with an enclosed volume. Hasse

discloses a fastener that comprises the maladour counteractant and is attached to the backsheet, therefore the fastener being the carrier which is directly attached to the wall/backsheet of the pouch. Caldwell discloses a core which is the carrier and is indirectly attached to the walls of the pouch, and Gross discloses a topsheet that is directly attached to the wall/backsheet of the pouch. Therefore rejections stand as stated above.

32. With respect to arguments with regards to the 103(a) rejection. Applicant has argued that Gancet does not disclose a carbon dioxide generator, however as stated in the rejection, Gancet does disclose the use of chlorine dioxide as a pH buffer, therefore rejection stands as stated above. The applicant has only argued the combination of references as not disclosing the chlorine dioxide generator, it is the examiner's position that Gancet does disclose this, therefore rejection stands as stated above.

Conclusion

33. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jamisue A. Webb whose telephone number is (703) 308-8579. The examiner can normally be reached on M-F (7:30 - 4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dennis Ruhl can be reached on (703)308-2262. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

jaw

July 31, 2002


GLENN K. DAWSON
PRIMARY EXAMINER